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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/512,085	11/08/2004	Erik Hestvik	04196	2788
23338 7590 10/01/2009 DENNISON, SCHULTZ & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314				
EXAMINER				
MAL, TRI M				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
10/01/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/512,085

Applicant(s)

HESTVIK, ERIK

Examiner

Tri M. Mai

Art Unit

3781

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) ____ is/are pending in the application.
4a) Of the above claim(s) 29 and 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 27, 28, 31-37 and 41-44 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date ____

1. Claims 29, and 38-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth.
2. Claims 27, 28, 32-35, and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregg (6127072) in view of Parsons et al. (4955518).

Regarding independent claim 44, Gregg teaches a holder attachable to a wearable support member. The holder a first holding member having a gap at 84 so that the grip end 12 is free, a second holding member in Fig. 10 with a diameter marginally larger than the diameter of the end of the device at 24 and 34 and in another embodiment in Fig. 10. The two holding members are separated and comprising receiving members at 118 so that the holder assumes the function of a single unit and the distance between the first and second holding members being adjustable, col. 7, ln. 15. Gregg meets all claimed limitations except for the flexible material that include a locking device for closing and opening the gap for the first holding member.

Gregg meets all claimed limitations except for the flexible material with the locking device, Parsons teaches that it is known in the art to provide a flexible material at 25 with a locking device at 26a/26b. It would have been obvious to one of ordinary skill in the art to provide a holding clip locking device as taught by Parsons to provide added security.

Note that claims as amended do not add any structure to the device since the claim recites the baton only as an intended use.

Regarding claim 32, the first holding member in Gregg in view of Parsons inherently has a high frictional contact as compared to the second holding member due to the device having the strap holding tightly the content.

Regarding claim 41, Parsons teaches that it is known in the art to make holder from plastic, col. 3, ln. 56. It would have been obvious to one of ordinary skill in the art to make the holder from plastic to provide the desired material for the holding device.

3. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Gregg rejection, as set forth in paragraph 2, and further in view of Oakes (3992799). Gregg meets all claimed limitations except for the material being rubber material. It would have been obvious to one of ordinary skill in the art to provide rubber material as taught by Oakes, col. 4, ln. 18 to provide the desired material for the desired resiliency.

4. Claims 34, 35, and 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Marino (4751923). Marino teaches a 1st holding member being either loop 58 or 38, and the locking device is the hook and loop fasteners, and the other loop of 38 and 58 is the second loop with a diameter as claimed, i.e., the loop can conform to the diameter of the device and thus having diameter as claimed. The two loops can be adjustable as claimed.

5. Claims 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marino in view of Chee (5086762). Marino meets all claimed limitations except for the buckle. Chee teaches that it is known in the art to provide a buckle for a belt at 52. It would have been obvious to one of ordinary skill in the art to provide a belt as taught by Marino to provide an alternative device for securing the belt.

It would have been obvious to one of ordinary skill in the art to provide the holding members on opposite sides of the buckle to provide the desired placement of the holding members.

6. Claims 34-36, and 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (4863083). Chen teaches a 1st holding member being one of the loop in figs. 1, and the locking device is the hook and loop fasteners 28, and one of other loop of is the second loop with a diameter as claimed, i.e, the loop can conform to the diameter of the device and thus having diameter as claimed. The loops can be adjustable via the loops 24/30 as claimed.

7. Applicant's arguments have been fully considered but they are not persuasive. It is noted that applicant provides little or no argument against the Chen '083, the Marino '923, and Gregg rejections. Applicant focused on the secondary reference Parsons reference. The only relevant from the Parson reference is that Parsons teaches the strap locking with the fastener for the device and to modify the device of Gregg to provide a strap with a fastener would have been obvious. Applicant has not point out any differences with Chen, Marino and Ratcliff. Applicant is noted that all that is set forth in the independent claim 44 are two flexible holding devices and anyone of these references teaches two separate holding devices. Since the claims do not set forth a combination with a baton, any of these devices would be capable of supporting a baton device by retaining it at the two ends.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tri M. Mai/
Primary Examiner, Art Unit 3781